

**REMARKS**

This Amendment is in response to the Office Action mailed June 27, 2005. The Office Action rejected claims 1-2, 6-8, 14 under 35 U.S.C. §102, and rejected claims 3 and 9-13 under 35 U.S.C. §103, and objected to claims 4 and 5.

Claims 1, 2, 11, and 14 have been amended. Claims 18-61 have been added. Claims 1-14 and 18-61 remain pending in the application. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

**Rejections Under 35 U.S.C. § 102(e)**

The Office Action rejected claim 1-2, 6-8, 14 under 35 U.S.C. §102(e) as being anticipated by Holcman et al. (U.S. Publication No. 2003/0108007) (herein "Holcman").

Applicant traverses this rejection in its entirety.

While Applicant disagrees that Holcman teaches the invention recited in claims 1 and 14, Applicant has amended the claims to clarify the invention claimed. As amended, claims 1 and 14 recite that the first and second acoustic transmissions originate from a source signal which includes audio content. Holcman teaches that 32-bit number SRES is calculated from an authentication key (Ki) and a random number (RAND). The number SRES is calculated by both a mobile station and by a network device, sent to a system where the numbers are compared. This number SRES is not the claimed acoustic signal that includes audio content.

Additionally, present claims match audio content in the received acoustic signals, not an encoded number (SRES) as done in Holcman. It is the audio content which is then compared to determine if a match exists. Comparing and matching audio content (which has no defined boundaries) is vastly different than merely comparing two numbers as done by Holcman. Only after a match of audio content is performed does the present invention associate such match with a mark (e.g., number). Thus, Holcman fails to teach this limitation.

Furthermore, the present claim explicitly recites that the first and second acoustic transmissions originate from the same source signal. Holcman, on the other hand, teaches that the SRES numbers are separately calculated by the mobile station and the network device. (See

Paragraphs 65-66, Figure 4) Thus, SRES numbers do not originate from the same source signal as claimed. Applicant submits that at least these two claimed limitations make the present invention distinguishable from Holcman.

For the foregoing reasons, Applicant contends that the Holcman fails to anticipate the invention as claimed. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 102(e) rejections of claims 1-2, 6-8, and 14.

### **Rejections Under 35 U.S.C. § 103**

The Office Action rejected claims 3 and 9-13 under 35 U.S.C. 103(a) as being unpatentable over Holcman et al. (U.S. Publication No. 2003/0108007) (herein “Holcman”) in view of Bolgiano et al. (U.S. Pat. No. 5,859,879) (herein “Bolgiano”).

As to claim 3, the Office Action cites Bolgiano, Col. 17, lines 9-25, as teaching that “multiple secondary acoustic transmissions are received and processed to identify a best match between the first acoustic transmission and one of the secondary acoustic transmissions.” However, Bolgiano fails to teach any type of matching in the cited section or any other section. Applicant submits that Bolgiano fails to teach or suggest this limitation of claim 3.

As to claims 11, 12, and 13, the Office Action states that the cited prior art fails to teach the invention as claimed but that it “would have been an obvious matter of design choice to have first and second acoustic transmission comprising a radio broadcast since the invention would perform equally well with the first and second acoustic transmissions comprise a radio broadcast.” Applicant submits that as used in the present application and claims, this limitation should be interpreted to mean that the acoustic transmissions include content from a radio broadcast (e.g., radio advertising, radio programming, music, etc.). This is not an obvious matter

of design choice but rather a component of the novel method claimed. Nothing in the cited references teaches or suggests these limitations.

For at least the reasons discussed above, Applicant submits that the invention recited in claims 3 and 9-13 are patentably distinguishable over the cited prior art. Applicant respectfully requests that the 35 U.S.C. § 103 rejections be withdrawn.

Should the Examiner maintain any of the above rejections, Applicant respectfully requests that the noted limitations be identified in the cited references with sufficient specificity to allow Applicant to evaluate the merits of such rejections.

#### **Allowable Subject Matter**

Applicant notes with appreciation the indication of allowable subject matter in claims 4 and 5.

**Conclusion**

In view of the amendments and remarks made above, it is respectfully submitted that the pending claims are in condition for allowance, and such action is respectfully solicited.

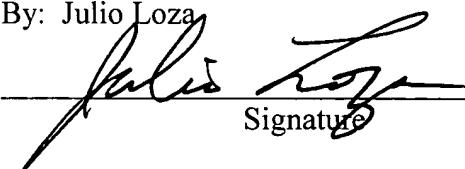
Authorization is hereby given to charge our Deposit Account No. 19-2090 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such an extension.

Respectfully submitted,

Sheldon & Mak

  
Julio Loza  
Registration. No. 47,758

By: Julio Loza

  
Signature

Dated: September 27, 2005